

EDUCATE



Michigan Guide to Prepaid Funeral and Cemetery Sales Regulation

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU (CSCL)

ENHANCE

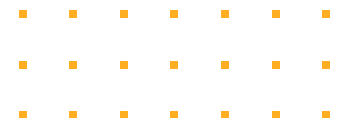
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ENHANCE

Prepaid Funeral and Cemetery Sales Act



This guide is intended to provide an overview of the Prepaid Funeral and Cemetery Sales Act, Act 255 of 1986 (“the Act”) and the rules under the Act. This guide is not intended to replace the Act and rules and does not purport to cover all aspects of the industry or all regulatory requirements. You are urged to review the Act and the rules under it and to speak with an attorney if you do not understand the requirements that they impose. A link to the Act and rules is available on the Bureau website at www.michigan.gov/cscl

What is a Prepaid Contract?

A “prepaid contract” subject to the Act is “a contract requiring payment in advance for funeral or cemetery services or merchandise, physical delivery and retention of which would occur after death under a guaranteed price contract or a nonguaranteed price contract.” A “prepaid contract” does not include a contract for the sale of merchandise or services entered into after the death of the contract beneficiary.

Section of the Act: MCL 328.215(d)



Registration requirement

A person who sells, provides, or agrees to provide funeral or cemetery services pursuant to a prepaid contract in Michigan must be registered with the Bureau and have a certificate of registration.

Section of the Act: MCL 328.216

Registration Process

To become registered as a Prepaid Funeral Contract Seller/Provider, the applicant must apply through MiCLEAR, the website used by the Bureau to facilitate licensing under the Act. There are instructional guides on the main MiCLEAR page with step-by-step instructions on how to create an account and how to apply for a new Prepaid Funeral Contract Seller/Provider registration.

Additional Required Documents to be submitted with the application include:

- The names and addresses of persons owning 10% or more interest in the entity applying for registration.
- A list of the names and addresses of any escrow agents in which funds have been or will be deposited by the registrant.
- Copies of all escrow or trust agreements between a registrant (applicant) and an escrow agent. This is not a list of individuals who have purchased contracts.
- Notary Statement. (This form can be found by clicking the link on the Supporting Documents page of the application).
- Assignee/Assignor Notification Form (if applicable, this form can be found by clicking the link on the Supporting Documents page of the application).

Common issues that result in an incomplete application notice being sent to the applicant:

- Notary Statement not submitted.
 - Assignee/Assignor Notification Form not received when assuming contracts from another registrant.
 - Entity that applies is not filed with or not in good standing with the State of Michigan, Department of Licensing and Regulatory Affairs, Corporations Division.
 - Copies of all escrow/trust agreements (between applicant and escrow agent) not submitted or submitted copy is not executed.
- We cannot accept bank statements or list of individual contract holders.

Registration Renewal

All renewals are submitted through the MiCLEAR portal. There are instructional guides on the main MiCLEAR page with step-by-step instructions on how to renew your registration.

Tips for renewing:

- If you have not already done so, you will need to create a MiCLEAR account. (Please follow the instructional guides on MiCLEAR main page.)
- If you have not already linked your registration number to your account, you will need to do so. (Please follow the instructional guide on the MiCLEAR main page). To renew your license, you will need your unique PIN for your registration number, assigned by the Bureau. Please e-mail CSCLOnline@michigan.gov to request that unique PIN.
- If you are renewing a current registration, the renewal fee will be \$30.00 not \$120.00. If the payment screen indicates the fee is \$120.00, ***please stop and verify*** that you are in the correct application.

Section of the Act: MCL 328.216



Record Keeping Requirements

The Act and rules specify books and records that registrants are required to make and keep. These records include the following documents and information:

1. Copies of all prepaid contracts
2. The dates and amounts of payments made
3. The name and address of each contract buyer
4. The name and address of each contract beneficiary
5. The name and address of each escrow agent
6. The date and amount of each deposit made to an escrow agent
7. The total price of each contract (exclusive of commission)
8. Any commission received for each contract
9. The date each contract is performed, canceled, or revoked
10. The date and amount of any refund paid to a contract buyer



The records are required to be kept for at least **36 months** after performance of all obligations of each prepaid contract or after the filing of the Prepaid Funeral and Cemetery Sales Act Annual Report that includes a prepaid contract has been performed. Prepaid Funeral and Cemetery Sales Act Annual Report requirements are discussed in further detail in the next section.

Prepaid Funeral and Cemetery Sales Act Annual Report Requirements

A prepaid registrant must annually submit a Prepaid Funeral and Cemetery Sales Act Annual Report to the Bureau on or *before* **July 15th**. This report provides data for the previous calendar year and should be prepared by the Registrant and attested to or certified by a Michigan-licensed CPA on the form provided by the Bureau.



A registrant who has not sold, provided, or agreed to provide merchandise or funeral or cemetery services in accordance with a prepaid contract and who has no obligations with respect to an outstanding prepaid contract may submit a sworn statement that no contracts have been sold, provided, or agreed to and there are no obligations outstanding. This sworn statement can be submitted in lieu of completing the full Prepaid Funeral and Cemetery Sales Act Annual Report. A copy of the sworn statement form is available within the Prepaid Funeral and Cemetery Sales Act Annual Report Form on the Bureau's website at <http://www.michigan.gov/cscl>.



Report Forms are available on the **Forms & Publications Page** of the Bureau's website. Once completed, these forms will only be accepted if they are submitted through the Registrant's MiCLEAR account. Instructions on how to submit these forms are available at www.michigan.gov/miclear.

Registrants may submit a request to extend the deadline for submission of the Annual Report for not more than **90 days**. Extension requests are due by no later than **July 1** and must be submitted through the Registrant's MiCLEAR account.

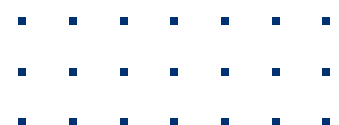
Contract Requirements

The Act and rules create requirements for a registrant's contracts with customers.

- The contracts shall disclose, **in boldface type**,
 - If a commission is charged, the amount of the commission and the fact that it is a charge in addition to the contract price.
 - The contract buyer's right to cancel and the amount of refund the consumer is entitled to upon cancellation. (Refund provisions must comply with MCL 328.223.)

"This contract may be canceled either before death or after death by the buyer or, if the buyer is deceased, by the person or persons legally authorized to make funeral or cemetery arrangements. If the contract is canceled, the buyer or the buyer's estate is entitled to receive a refund of ____ % of the contract price and any income as required by law.

After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract."



Contract Requirements Continued



- The contract shall provide that the contract buyer may designate a new contract beneficiary any time before the death of the contract beneficiary originally specified.
- A prepaid contract that is a nonguaranteed price contract shall have it indicated clearly on the contract that it is a nonguaranteed price contract and that the actual costs of the merchandise or funeral or cemetery services delivered at the time of death may be greater or less.
- A person who offers either merchandise of funeral or cemetery services on a preneed or at-need basis shall comply with the price disclosure rules of the federal trade commission, 16 CFR, part 453.

Sections of the Act: MCL 328.220, MCL 328.221, MCL 328.223, MCL 328.225, and MCL 328.226

Rule: 339.23

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Escrow Requirements

Funds received in connection with a prepaid contract must be deposited with an escrow agent within **30 days** of receipt of the funds. MCL 328.222 under the Act provides detailed information on escrow requirements, including:

- Who can serve as an escrow agent;
- The limits on fees that can be charged in the escrow account; and
- What notices have to be provided to the consumer.

The registrant's agreement with the escrow agent must specify that the escrow agent agrees to allow inspection and copying of records. This applies to records pertaining to the escrow funds held or managed by it when requested by the department, the registrant, the contract buyer or beneficiary, or upon order of a court.

Please note that the burden to ensure that escrow account requirements are met is on the registrant. You should carefully review the Act's requirements and the agreement with your Escrow Agent to ensure that the escrow account is compliant.



Assignment of Contracts



If a registrant assigns or transfers its obligations under a prepaid contract to another provider, they must notify the contract buyer of the assignment in writing.

If the registrant discontinues business or its license is suspended indefinitely, lapsed or revoked, then it must assign its prepaid contracts to another registrant within 60 days and notify the department and contract buyers within 30 days of the assignment. Contracts not assigned shall be cancelled and the buyer issued a refund of the contract.

A registrant who purchases or is the assignee of another registrant's business operations shall notify the department and the contract buyers of the purchase or assignment of the prepaid contracts. The Assignor-Assignee Notification Form is available on the Forms and Publications Sections of the Bureau's website. Please review MCL 328.219 and MCL 328.223 under the Act, as well as Rule 339.35 for additional information regarding Assignment requirements.



Prohibited Conduct



The Act identifies conduct that is prohibited by a person selling or offering to sell merchandise or funeral or cemetery services. Prohibited conduct includes:

- Soliciting a specific person for the purpose of providing merchandise or funeral or cemetery services for a prospective contract beneficiary knowing that the death of the prospective contract beneficiary has already occurred or is probably imminent.
- Making a false or misleading statement, oral or written for the purpose of inducing a person to purchase a prepaid contract.
- Advertising in a manner which is false, misleading, deceptive or unfair.
- Failing to refund principal and income paid for a prepaid contract in violation of the Act.
- Refusing the use of merchandise bought from another vendor or discriminating by price, burial fee, or otherwise for not purchasing merchandise from or under the direction of the funeral establishment or cemetery.
- Requiring the purchase of a cemetery burial vault or other outside container from a particular person as a condition to burial in a cemetery in this state.
- Practicing fraud, or deception in obtaining registration.
- Refusing to disclose books and records required to be maintained and disclosed under this act.
- Converting funds or failing to escrow funds.

Mortuary Science Relationship to Prepaid Services



Persons who perform or offer to perform services for which a mortuary science license or funeral establishment license is required should be appropriately licensed under Article 18 of the occupational code. A registration under the Prepaid Funeral and Cemetery Sales Act does not authorize a contract seller or provider to perform or offer to perform services which require a mortuary science or funeral establishment license.

MCL 339.1806(4) under the Occupational Code states that the Bureau shall not issue or renew a mortuary science license unless the applicant certifies that it or a person that has a controlling interest in or is under common control with it is registered under the Act to provide prepaid contract services; or, that the applicant has a contract with a registrant under the Act to provide prepaid contract services on behalf of the funeral establishment.

Sections of the Act: MCL 328.225



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